IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No.4754 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RASIKLAL JASHKARAN SHAH

Versus

HASANKHAN MEHBOOBKHAN BALOCH

Appearance:

MR VIPUL S.MODI for the petitioner.

MS HB PUNANI, APP for Respondent No.2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of Decision: 13/10/2003

C.A.V. JUDGMENT

#. Earlier this matter has been disposed of finally by this Court on 27.8.2003 and the order to that effect was also transcribed, but, before the same could be signed, learned counsel for the petitioner Mr.Modi approached this Court on 2.9.2003 and submitted that his colleague has mentioned the matter before this Court orally in the

morning, but, it could not be reflected on the Board, and, therefore, this Court has disposed of the matter on its own merits in absence of the learned counsel for the petitioner. Since the order dated 27.8.2003 has not been signed by this Court, the matter was restored on file and specific order to that effect was also passed by this Court on 2.9.2003 and the matter was adjourned to 11/9/2003.

#. On 11.9.2003, I have heard Mr.Modi, learned counsel for the petitioner.

#. In the petition, the petitioner has mainly raised the following contentions.:

(1) The complaint does not disclose the ingredients of alleged offence under sections 406 and 420 of Indian Penal Code expressly or impliedly.

(2) The complaint is filed with ulterior motive to pressurise the petitioner or to adopt short cut of civil proceedings.

(3) The learned Magistrate has passed the impugned order of inquiry under section 156(3) of the Code of Criminal Procedure ("the Code" for short) without applying mind.

#. I have also heard Ms.Hansa Punani, learned APP for the respondent State. I have also gone through the petition and the documents annexed with the petition.

#. There is no dispute regarding the principle laid down by the Apex Court in the cases upon which reliance has been placed by the learned counsel for the petitioner and keeping in mind the law laid down by the Apex Court in the judgments upon which reliance has been placed by the learned counsel for the petitioner, I proceed further into the matter. It reflects from the impugned complaint at Annexure-B that the said complaint is filed by the complainant directly into the Court of the learned Judicial Magistrate, First Class, Bajana on 4.1.1995 in which the learned Magistrate ordered inquiry under Section 156(3) of the Code and directed the PSI, Bajana Police Station to submit the report on or before 9.2.1995. On careful consideration of the impugned complaint, it clearly discloses, prima facie, ingredients of the offence alleged against the petitioner. The trial Court, after considering the complaint in question, and considering the verification made by the complainant, has rightly ordered inquiry under Section 156(3) of the Code.

In my opinion, the learned Magistrate by the said order, has only put the machinery into motion for investigation. Reliance can be placed on the decision rendered by the Apex Court in the case of Rajesh Bajaj Vs. State NCT of Delhi and others, wherein the Apex Court has held that if the averments in the complaint, prima facie, make out a case for investigation, the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail. Quashing of the complaint on the ground that the complaint disclosed a commercial or monetary transaction not justified. Over and above, learned counsel for the petitioner has relied upon decision given in the case of S.N.Palanitkar and others. Vs. State of Bihar and another, reported in AIR 2001 SC 2960 and the decision in the case of Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another, reported in (2000)4 SCC 168.

#. In the facts and circumstances of the case and in view of the decision rendered by the Apex Court in the case of Rajesh Bajaj (supra), when the complaint itself discloses prima facie case for investigation and discloses ingredients of the offence alleged in the complaint, the impugned complaint and the order passed thereon cannot be quashed and set aside.

#. In the result, the present petition is hereby rejected. Rule is discharged. Interim relief stands vacated forthwith.

#. The trial Court is directed to proceed further with the matter and dispose of the criminal case in question as expeditiously as possible.

#. The record and proceedings of the trial Court, if called for earlier, be sent back forthwith.

(R.P.Dholakia,J)
(pathan)